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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 120425420-2420-01]

RIN 0648-BB92

Fisheries of the United States; National Standard 1 Guidelines

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Advance notice of proposed rulemaking; request for comments; consideration of revision to National Standard 1 Guidelines.

SUMMARY: NMFS issues this advance notice of proposed rulemaking (ANPR) to provide background information and request public comment on potential adjustments to the National Standard 1 Guidelines, one of 10 national standards for fishery conservation and management contained in Section 301 of the Magnuson Stevens Fishery Conservation and Management Act. Since the guidelines were last updated in 2009, a number of issues regarding the application of the guidelines were identified by stakeholders and managers that may warrant their revision. This action provides the public with a formal opportunity to comment on the specific ideas mentioned in this ANPR, as well as any additional ideas and solutions that could improve provisions of the National Standard 1 Guidelines.

DATES: Written comments regarding the issues in this ANPR must be received by 5 p.m., local time, on [insert date 90 days after publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by “NOAA-NMFS-2012-0059”, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: www.regulations.gov. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter “NOAA-NMFS-2012-0059” in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Fax: 301-713-1193, Attn: Wesley Patrick.
- Mail: Wesley Patrick; National Marine Fisheries Service, NOAA; 1315 East-West Highway, Room 13436; Silver Spring, MD 20910.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to another address or individual, or received after the end of the comment period, may not be considered. All comments received are part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Wesley Patrick, Fisheries Policy Analyst,
National Marine Fisheries Service, 301-427-8566.

SUPPLEMENTARY INFORMATION:

Background

Section 301(a) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) contains 10 national standards for fishery conservation and management. Any fishery management plans (FMP) prepared under the MSA, and any regulation promulgated pursuant to the MSA to implement any such plan, must be consistent with these national standards. National Standard 1 (NS1) of the MSA states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery for the U.S. fishing industry.

Section 301(b) of the MSA requires that the Secretary establish advisory guidelines (which shall not have the force and effect of law), based on the national standards to assist in the development of fishery management plans. Guidelines for NS1 are codified in 50 CFR 600.310. NMFS revised the NS1 Guidelines on January 16, 2009 (74 FR 3178) to reflect the requirements enacted by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 for annual catch limits (ACLs) and accountability measures (AMs) to end and prevent overfishing.

From 2007 to 2012, the 46 Federal FMPs have been amended to implement ACLs and AMs to end and prevent overfishing. In the course of this work, a number of issues regarding the application of the NS1 Guidelines were identified that may warrant their revision. NMFS seeks public comments on these and any other issues related to NS1:

1. Stocks in a fishery. The MSA requires that Councils develop FMPs for fisheries that require “conservation and management” (MSA 302(h)(1)). The MSA provides the Councils with wide latitude in defining the scope of an FMP. Some FMPs include a relatively small number of species, focusing on the primary target species of the fishery. In other FMPs, a much broader range of species are included. The NS1 Guidelines establish and define Ecosystem Component (EC) species and provide that EC species may be included in the FMP but are not considered stocks in the fishery and thus are not required to have biological reference points or ACLs. There has been considerable discussion about the criteria for classifying EC species and the utility of the EC species concept. Thus, revision of the guidance may be warranted to further describe criteria for classifying stocks in a fishery and EC species.

2. Overfishing and multi-year impacts. The current NS1 Guidelines provide that overfishing must be determined either by comparing catch to the overfishing limit (OFL) or by comparing fishing mortality to the maximum fishing mortality threshold (§ 600.310 (e)(2)(ii)(A)). Overfishing determinations are made for the most recent year for which there is information. Stakeholders have expressed interest in exploring alternative definitions of overfishing that would take a longer, multi-year view of the impact of fishing on the stock’s ability to produce maximum sustainable yield (MSY).

3. Annual catch limits and optimum yield. In some fisheries, implementation of the guidance on acceptable biological catch (ABC) control rules, ACLs, and AMs has resulted in real or perceived reductions in catch. Questions have been raised about the relationship between ACLs and the objective of achieving the OY for a fishery. The MSA defines OY as being reduced from MSY to account for relevant economic, social, or ecological factors, and states that OY in an overfished fishery must provide for rebuilding the fishery (MSA 3(33)). There is

interest from stakeholders in improving guidance to better address economic, social, and ecological considerations in the establishment of OY and to more clearly describe the relationship between ACL and OY.

4. Mixed-stock fisheries and optimum yield. Management of mixed-stock fisheries is challenging, because some stocks are relatively more abundant or are more or less susceptible to overfishing than others. The MSA requires that overfishing be prevented, and that the OY for a fishery provide for rebuilding overfished stocks. Nonetheless, some stakeholders believe that ACL and rebuilding requirements prevent them from achieving OY of healthy stocks. Further guidance on how OY should be specified to balance the multiple considerations in mixed-stock fisheries may be warranted.

5. Scientific uncertainty and management uncertainty. The NS1 Guidelines identify two types of uncertainty that should be addressed when setting catch limits and accountability measures: scientific uncertainty and management uncertainty (§ 600.310 (f)). Scientific uncertainty is related to the uncertainty of calculating the true OFL, and is addressed by a Council's Scientific and Statistical Committee (SSC) by setting ABC below the OFL. Management uncertainty is the uncertainty of controlling catch so that it does not exceed the ACL, and is addressed when setting AMs and in setting an annual catch target below the ACL. Some stakeholders believe that consideration of both scientific and management uncertainty causes ACLs to be overly precautionary. Further clarification on the consideration of scientific and management uncertainty may be warranted.

6. Data poor stocks. Stocks without sufficient data to conduct a formal scientific stock assessment are considered to be data poor stocks. Establishing appropriate ACLs for data poor stocks can be challenging. The experience of the Councils and their SSCs in implementing

ABCs and ACLs for data poor stocks may provide valuable information on which to base improvements in the NS1 Guidelines for data poor stocks.

7. Acceptable biological catch control rules. The NS1 Guidelines require a Council to establish an ABC control rule for each stock and stock complex, based on scientific advice from its SSC (§ 600.310 (f)). ABC control rules are a specified approach to setting the ABC that addresses scientific uncertainty, and incorporate a policy decision on the acceptable level of risk that overfishing might occur. A variety of ABC control rules have been implemented and a review of those control rules could lead to improvements in the NS1 Guidelines. In addition, for some fisheries there is interest in implementing provisions that carry over unharvested allocations from one year to the next. Guidance may be needed on how to consider carry-over within ABC control rules.

8. Catch accounting. Questions have been raised by managers about the types of “catch” that must be considered within the ABC and ACL, particularly in regard to catch resulting from exempted fishing permits and scientific research activities. The definition of catch in the NS1 Guidelines includes fish taken in commercial, recreational, subsistence, tribal, and other fisheries. Catch includes fish that are retained for any purpose, as well as mortality of fish that are discarded. In the final rule response to comment number 35 (74 FR 3718; January 16, 2009), NMFS stated that this definition would include allocations for scientific research and mortality from any other fishing activity. Additional guidance may be needed to clarify how to account for all sources of mortality (e.g., bycatch, scientific research catch, etc.) when establishing ABCs and ACLs.

9. Accountability measures. AMs are management controls to prevent ACLs from being exceeded, and to correct or mitigate overages of the ACL if they occur. AMs must be tailored to

the specific needs of a fishery, and are key to the success of ACL systems in ending and preventing overfishing. NMFS invites comments on the guidance for AMs.

10. ACL exceptions. Under the MSA, stocks that have a life cycle of approximately 1 year and stocks subject to international agreements are not required to have ACLs. The NS1 Guidelines describe that the life cycle exception applies to “a stock for which the average length of time it takes for an individual to produce a reproductively active offspring is approximately 1 year and that the individual has only one breeding season in its lifetime” (§ 600.310 (h)(2)(i)). The NS1 Guidelines also describe that the international agreement exception applies to stocks that are subject to “any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is party” (§ 600.310 (h)(2)(ii)). NMFS invites comments on the guidance pertaining to these exceptions from the ACL requirements.

11. Rebuilding progress and revising rebuilding plans. The current NS1 Guidelines address how NMFS should respond if a stock reaches the end of its rebuilding plan and is not fully rebuilt, or its rebuilding status is unknown. However, the guidelines do not address the situation that occurs during the course of a rebuilding plan when rebuilding progress is determined to be inadequate. Inadequate progress can result from a number of factors, including:

- a. Management measures that do not adequately control the fishery.
- b. Environmental factors that limit stock growth.
- c. Significant changes in the rebuilding target (Bmsy) resulting from a new stock assessment.

NMFS intends to improve guidance on evaluating the progress of stocks in rebuilding plans and on revising the rebuilding plans in these situations.

Public Comments

To help determine the scope of issues to be addressed and to identify significant issues related to this action, NMFS is soliciting written comments on this ANPR. The public is encouraged to submit comments related to the specific ideas mentioned in this ANPR, as well as any additional ideas and solutions that could improve provisions of the NS1 Guidelines. In addition to considering revisions to the NS1 Guidelines, NMFS will consider whether it may be more appropriate to address some topics in technical guidance reports or policy directives than to change the guidelines codified at 50 CFR 600.310. NMFS welcomes comment on the appropriateness and utility of additional technical guidance reports and policy directives.

Authority: 16 U.S.C. 1801 et seq.

Dated: April 27, 2012

Alan D. Risenhoover,
Acting Deputy Assistant Administrator
For Regulatory Programs,
National Marine Fisheries Service.

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